

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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JAMES ATKINS,

Plaintiff,

v.

BRIAN E. WILLIAMS, SR. *et al.*,

Defendants.

Case No. 3:12-cv-00288-MMD-WGC

ORDER

This is a *pro se* prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. A full procedural history was given in the Court's order filed February 13, 2014. (Dkt. no. 30.)

Federal courts must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1),(2). *Pro se* pleadings, however, must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d. 696, 699 (9th Cir. 1988). In addition to the screening requirements under § 1915A, pursuant to the Prison Litigation Reform Act of 1995 (PLRA), a federal court must dismiss a prisoner's claim, "if the allegation of poverty is untrue," or if the action "is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a

1 defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2). Dismissal of a  
2 complaint for failure to state a claim upon which relief can be granted is provided for in  
3 Federal Rule of Civil Procedure 12(b)(6), and the court applies the same standard under  
4 § 1915 when reviewing the adequacy of a complaint or an amended complaint. When a  
5 court dismisses a complaint under § 1915(e), the plaintiff should be given leave to  
6 amend the complaint with directions as to curing its deficiencies, unless it is clear from  
7 the face of the complaint that the deficiencies could not be cured by amendment. See  
8 *Cato v. United States*, 70 F.3d. 1103, 1106 (9th Cir. 1995).

9 Pursuant to *Cato*, this Court has issued orders outlining the deficiencies of the  
10 complaint and amended complaints, and has afforded plaintiff multiple opportunities to  
11 amend in order to cure those deficiencies. (See dkt. nos. 3, 6, 26, 30.) Most recently, in  
12 the order filed February 13, 2014, the Court screened the second amended complaint.  
13 (Dkt. no. 30.) Plaintiff’s second amended complaint alleged that prison staff at the  
14 Southern Desert Correctional Center failed to protect plaintiff from harm by another  
15 inmate. (Dkt. no. 29.) The Court initially noted that the second amended complaint was  
16 not submitted on the court-approved civil rights complaint form, as required by LSR 1-4  
17 and as had been provided to plaintiff by the Clerk of Court when the Court’s order of  
18 August 21, 2013 was served on plaintiff. (Dkt. nos. 26 & 30.)

19 In the order of February 13, 2014, the Court found that plaintiff’s second  
20 amended complaint failed to state a cognizable civil rights claim against any named  
21 defendants. (Dkt. no. 30, at pp. 6-8.) As it had done in prior screening orders, the Court  
22 recited the Eighth Amendment standard for deliberate indifference to inmate safety, as  
23 set forth in *Farmer v. Brennan*, 511 U.S. 825 (1994). The Court granted plaintiff one  
24 final opportunity in which to file a third amended complaint that cured the deficiencies of  
25 his second amended complaint. (Dkt. no. 30, at pp. 7-8.) The Court directed the Clerk  
26 of Court to send plaintiff the court-approved civil rights complaint form and instructions  
27 for filing a third amended complaint. (*Id.*, at p. 8.) The Court directed plaintiff to file his  
28 third amended complaint within thirty (30) days. (*Id.*) Further, the Court warned plaintiff

1 that a failure to file a third amended complaint in compliance with the Court's order  
2 would result in dismissal of this action. (*Id.*)

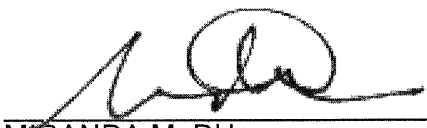
3 On March 18, 2014, plaintiff filed a document entitled "3<sup>rd</sup> Amended Complaint."  
4 (Dkt. no. 31.) On review, however, the document is not written on the court-approved  
5 civil rights complaint form provided by LSR 1-4, and, indeed, the document is not a third  
6 amended complaint. Rather, it is a two-page document in which plaintiff appears to  
7 address the Court as if he is writing a letter. This document, to the extent plaintiff  
8 intended it to serve as a third amended complaint, fails to state a cognizable civil rights  
9 claim against any defendant. As such, the third amended complaint is dismissed for  
10 failure to state a claim. Because the Court has provided plaintiff with multiple  
11 opportunities to file an amended complaint that states a cognizable claim against  
12 defendants, no further amendment is permitted. As such, the Court dismisses this  
13 action with prejudice for failure to state a cognizable claim. See 28 U.S.C. § 1915A(a);  
14 28 U.S.C. § 1915(e)(2).

15 It is therefore ordered that this action is dismissed with prejudice for failure to  
16 state a cognizable civil rights claim against any defendant.

17 It is further ordered that the Clerk of Court shall enter judgment accordingly.

18 It is further ordered any *in forma pauperis* appeal taken from this order would not  
19 be taken "in good faith" pursuant to 28 U.S.C. § 1915(a)(3).

20 DATED THIS 1<sup>st</sup> day of May 2014.  
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24 MIRANDA M. DU  
25 UNITED STATES DISTRICT JUDGE  
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